TAXATION — PARTICULAR FORMS OF TAXATION — INHERITANCE TAX ON EXERCISE BY WILL OF RESIDENT OF POWER OF APPOINTMENT IN WILL OF NON-RESIDENT. — A Massachusetts testator left personalty to be held there by trustees, and gave to a New York beneficiary the life interest, with a general power of appointment by will. This was exercised by the donee in favor of appointees in Massachusetts. Her will, executed at her residence in New York, was probated in Massachusetts only. New York seeks to tax the transfer under its inheritance tax law. (1909 N. Y. LAWS, c. 62, § 220 (6); CONSOL. LAWS, c. 60, Art. 10.) *Held*, that the statute, so far as applying to this case, is unconstitutional. *Matter of Canda*, 189 N. Y. Supp. 917 (App. Div.).

For a discussion of the principles involved, see NOTES, *supra*, p. 326.

TORTS — NEGLIGENT DISSEMINATION OF KNOWN FALSEHOODS — NERVOUS SHOCK RESULTING IN PHYSICAL HARM. — The defendant falsely told A among others that the plaintiff's son, who had been temporarily absent from home, had hanged himself. A told B, B told C, and C told D, who told the plaintiff. The defendant could have foreseen that the plaintiff would hear the report. The plaintiff, believing the report, suffered a severe nervous shock which produced physical ailments. She now sues the defendant for a malicious wrong which caused physical harm. *Held*, that the plaintiff recover. *Bielitzki* v. *Obadisk*, [1921] 3 W. W. Rep. 229 (K. B., Sask.).

The plaintiff here has suffered the sort of harm for which the better view is that the law should give compensation, even in cases of negligence. *Dulieu* v. *White*, [1901] 2 K. B. 669; *Lindley* v. *Knowlton*, 179 Cal. 298, 176 Pac. 440. *Contra*, *Spade* v. *Lynn, etc. R. Co.*, 168 Mass. 285, 47 N. E. 88. If such a statement had been made to her directly by the defendant, there would have been a strong inference of an aggressive intent, and recovery could clearly have been had. *Wilkinson* v. *Downton*, [1897] 2 Q. B. 57. See 34 HARV. L. REV. 337. But granting that the defendant's mind had not addressed itself to the consequences likely to follow his act, the case is sound. It disregards categories, and applies to unusual facts general principles of tort liability. It recognizes a duty not to make knowingly false statements, from which it could be foreseen that injury might result. The duty is grounded on the plaintiff's interest in her personal security, and the obvious social interest in protecting that security, which outbalance the defendant's interest in the free exercise of his faculties for the purpose of disseminating lies.

TRADE UNIONS — INTERNAL ADMINISTRATION — BY-LAW INVOLVING EXPULSION FOR PETITIONING THE LEGISLATURE. — A by-law of the defendant labor union provided that any member using his influence against the legislative representative of the union should be expelled. The plaintiff member, in admitted violation of the by-law, signed a petition to the legislature asking the reconsideration of a certain statute. He was expelled and now seeks reinstatement on the ground that the by-law is void since the state constitution guarantees the right to petition the legislature. *Held*, that the plaintiff be reinstated. *Spayd* v. *Ringing Rock Lodge*, 113 Atl. 70 (Pa.).

For a discussion of the principles involved, see NOTES, *supra*, p. 332.

WILLS — REVOCATION — DEPENDENT RELATIVE REVOCATION — REVOCATION BY CLAUSE IN LOST WILL. — The testatrix duly executed two successive wills with substantially the same provisions, leaving her estate to the proponent. The second will, containing an express revocatory clause, was lost after her death, and only one witness was available. A statute provided that no will should be proved as a lost will unless upon the testimony of at least two credible witnesses. (CAL. CIV. CODE, § 1339.) There was further pro-

vision that a will might be revoked by a written will or other writing of the testator, declaring such revocation, and executed with the same formalities as a will. (§ 1292.) The proponent offered the first will for probate. The contestant, to establish intestacy, offered to prove its revocation by the revocation clause of the lost will, upon the testimony of the one available witness. *Held*, that the second will was inoperative as a revocation. *In re Thompson's Estate*, 198 Pac. 795 (Cal.).

Under the Code the second will could not be probated. The majority, holding that the revocatory clause could not be given effect apart from the will containing it, decided that there was no revocation. The weight of authority and reason is with the minority view, that the second will, being executed with the requisite formalities, is valid as a revocation. *Matter of Wear*, 131 App. Div. 875, 116 N. Y. Supp. 304; *Vining* v. *Hall*, 40 Miss. 83. It is clear that a written revocation need not be the valid last will of the testator. See CAL. CIV. CODE, § 1292. And, further, a revocation acts *eo instanti*. *Brown* v. *Brown*, 8 E. & B. 876; *Lones* v. *Lones*, 108 Cal. 688, 41 Pac. 771. But if the first will is thus revoked and the second cannot be probated, the obvious intent of the testatrix to leave her property to the proponent will be defeated. Can her intent be properly effectuated? It is apparent that she revoked the first will relying on the certainty of probate of the second. The doctrine of dependent relative revocation is applied to relieve against a revocation made under a present mistake. See Joseph Warren, "Dependent Relative Revocation," 33 HARV. L. REV. 337, 348 *et seq.* In the principal case supervening circumstance, the loss of the second will, rendered probate impossible. In the law of contracts, the substantive rules of mistake and impossibility are inherently the same. See 3 WILLISTON, CONTRACTS, § 1953. The impossibility in the principal case should not be allowed, any more than present mistake, to defeat the testatrix's intent. The revocation should be recognized as valid, but set aside.

BOOK REVIEWS

ESSAYS ON CONSTITUTIONAL LAW AND EQUITY. By Henry Schofield. Boston: Chipman Law Publishing Co. 1921. Vol. I, pp. xxiv, 456. Vol. II, pp. viii, 457–1006.

The subject matter of some of these essays is of local interest only, such as the articles on the "Street Railroad Problem of Chicago" and the "State Civil Service Act and the Power of Appointment." Others, however, contain valuable discussions of fundamental problems of constitutional law, conflict of laws and equity, such as the relation of federal and state courts under the due process clause, the problem of *Swift* v. *Tyson*,[1] the scope of the full faith and credit clause, the vexatious problem of jurisdiction for divorce, the specific enforcement of negative covenants, and the rule of mutuality.

In the dedication Professor Schofield is spoken of as a consummate master of constitutional law. There is much in the essays to justify this. A wide and accurate knowledge and understanding of the actual decisions is displayed. In fact at times the argument is so packed with authorities as to make heavy going for the reader. The author does not hesitate to depart from the beaten paths of his subject. He proposes and defends with vigor and originality

[1] 16 Pet. (U. S.) 1.